

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

ROBERT ARTHUR GOOSBY

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CASE NO. 1:06-CR-013-WKW

ORDER

This case is before the Court on the government's Unopposed Motion to Continue Trial (Doc. # 18). The criminal case is currently set for trial during the October 16, 2006 term. For the reasons set forth below, the Court finds that the trial should be continued pursuant to 18 U.S.C. § 3161(h).

While the grant of a continuance is left to the sound discretion of the trial judge, *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the Court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.

18 U.S.C. § 3161(c)(1). However, the Act excludes from the 70 day period any continuance based on "[a]ny period of delay resulting from the absence or unavailability of the defendant or essential witness." § 3161(h)(3)(A).

The Court finds that an essential witness is unavailable for trial during the October 16, 2006 term. In support of its motion to continue, the government represented that a material witness, Special Agent Tab Clardy of the Federal Bureau of Investigation, must attend a 30-day job training

in Quantico, Virginia, beginning on October 15, 2006. Agent Clardy's job training renders him "unavailable" pursuant to section 3161(h)(3). *See United States v. Barragan*, 793 F.2d 1255, 1258 (11th Cir. 1986).

Accordingly, it is ORDERED that the government's Unopposed Motion to Continue Trial (Doc. # 18) is GRANTED. Trial in this matter is continued from October 16, 2006, to the criminal term of court beginning on January 8, 2007, at 10:00 a.m.

DONE this the 6th day of October, 2006.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE